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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 19

Application Number: 09/739,718
Filing Date: December 18, 2000
Appellant(s): HUGUNIN, JIM

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 June 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because there is not discussion or argument explaining why the claims of the group are believed to be separately patentable.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,061,947	Mooers	05-2000
6,301,823 B1	Monitcello et al.	10-2001
4,962,609	Walker	10-1990

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 18, 20-24 and 26-32 are rejected under 35 U.S.C. 102(e), 102(b) and 103(a). This rejection is set forth in prior Office Action, Paper No. 11.

(11) Response to Argument

A. Rejection of claims 18, 20, 21, 26 and 28-31 under U.S.C. §102(e) as being anticipated by Mooers.

Applicant argues that the Mooers reference does not anticipate or make obvious the subject matter of claims 18, 20, 21, 26 and 28-31 because; 1.) Mooers does not disclose a "spoon lure, 2.) the body of Mooers' lure does not "receive" the scent receiving element because it is placed in a housing, 3.) The scent bladder is not "coplanar" with Mooers' lure body, 4.) The scent bladder does not "cooperate with the body to define a smooth continuous surface", 5.)

Mooers' scent bladder is not "directly" accessible from both sides and finally 6.) Moores lure must be altered to in order to reuse the scent bladder.

In response to the first argument it is noted that claim 18 recites only a "spoon-like" lure which broadly encompasses a wide range of shapes. As can be seen in Figures 1-9, Mooers' lure comprises two body sections 44 and 46 that form a slender handle-like portion at the rearward end of the lure, while the front end increases significantly in width to form a rounded front edge. This structure is considered to be capable of being utilized as a scoop or a "spoon-like" device, thus anticipating the subject matter of claim 18. Regarding the argument of item number two, the Examiner respectfully disagrees and insists that the scent bladder 40 is clearly received in the aperture 56 (See Figures 4 and 6). That a housing covers the scent bladder 40 is irrelevant since the scent bladder is unmistakably placed in aperture 56 and thus "received" by the lure body. Furthermore in response to the argument of item number five, once scent bladder 40 is placed in said aperture 56, the scent bladder is then exposed on both sides of the lure through apertures 36. These apertures 36 allow the bladder to be in direct contact with the water on each side of the lure so that the bait attractant can more efficiently be dispersed, and therefore the scent bladder is considered to be directly accessible form both sides.

In response to the arguments of item number three, the Examiner first brings attention to the fact that space is boundless and an infinite amount of planes exist in any given structure. For example the cylindrical body of the scent bladder 40 contains any number of theoretical planes, as a plane is merely two-dimensional and actually has no thickness. Merriam-Webster's Collegiate Dictionary (10^{th} Ed.) defines a plane as "a surface of such nature that a straight line joining two of its points lies wholly in that surface". When the scent bladder is placed in

aperture 56 a straight line can be drawn on element 46 from the front end of the lure to the rearward end of the lure, passing through said aperture 56 and inserted scent bladder 40, and joining two theoretical points lying wholly within that plane. Therefore it can be said that a plane defined by the body portion and a plane defined by the scent receiving element are in a coplanar relationship.

With regard to the argument of item four, Applicant contends that because Mooers' scent bladder is wider than body portion 46, it cannot conform to the cavity it is placed into and does not cooperate to create a smooth and continuous surface. The Examiner respectfully disagrees and points out that the scent bladder is made of a sponge-like material that easily contours to any shaped cavity it is placed into such as aperture 56 and housing 38 (Figure 4). Furthermore, the scent bladder cooperates with housing 38, which is considered to be part of the lure body providing what is considered to be a smooth and continuous surface, allowing for the lure to be hydrodynamic.

Finally regarding the argument of item number 6, it is noted that flap 54 is moved in order to replace the scent bladder, however the lure is not altered. Once the scent bladder has been changed, flap 54 is placed back in its original position and the lure is then used again in and unaltered state.

B. Rejection of claims 18, 20, 21, 26 and 28-31 under U.S.C. §102(e) as being anticipated by Monticello et al.

Applicant argues that the Monticello et al reference (hereinafter Monticello) does not anticipate or make obvious the subject matter of claims 18, 20, 21, 26 and 28-31 because; 1.) The

scent receiving element is not "coplanar" with Monticello's lure body, 2.) The scent receiving element does not "cooperate with the body to define a smooth continuous surface", 3.) Monticello's scent bladder is not "directly" accessible from both sides and finally 4.) Monticello's lure must be altered to in order to reuse the scent receiving element.

Regarding the first argument that Monticello does not disclose a plane in the scent receiving element to be coplanar with a plane in the body portion, the Examiner respectfully disagrees. As seen in Figure 1, the scent receiving 21 element is embedded in a port in the body of the lure 7 and is in flush contact with core 10. Similarly to the above discussion of coplanar alignment, the Examiner contends that a straight line could be drawn from ring 17 to ring 14 and passed through the lure body and scent receiving element 21, thereby defining a plane that both elements share and thus proving that two theoretical planes of each element are in coplanar alignment.

In the argument of item number two, Applicant insists that because the scent receiving element does not extend to either the top or bottom surfaces of the lure, it does not cooperate to with the body to define a smooth and continuous surface. The Examiner respectfully disagrees and notes that the subject matter of the scent receiving element extending to the top and bottom surface of the lure is not stated in the claims. Furthermore, if the scent receiving element 21 is embedded in and cooperating with soft coating 8 to make up the lure body 7, then element 21 is inherently cooperating with the body of the lure to define a smooth surface, since all parts cooperate to make up the whole.

Regarding the arguments of item number three that the scent receiving element is not "directly accessible from both sides" (claim 20). The Examiner respectfully disagrees and draws

attention to Monticello's lure, as viewed in Figure 1, where it can be seen that the scent receiving element 21 is centrally embedded in a port or cavity in soft coating 8. Monticello teaches that in use the absorbent material of scent receiving element 21 is injected with a bait attractant by puncturing soft coating 8 (Monticello, col.4, lns.42-50). Acknowledging that core 10 is made of metal and would resist puncturing through the top and bottom sides, element 21 can be accessed from either side A or B (See Examiner's reference characters in Figure 1) through soft coating 8, thus making it directly accessible from both sides.

Finally regarding the argument of item number four, that Monticello's scent receiving element is not attached to the body portion and does not allow for repeated use without altering the lure, the Examiner disagrees. Monticello explains specifically that the scent receiving element 21 is adhered to the core 10, thus it is attached to the body (col.2, lns.31-40). Furthermore, scent receiving element 21 can be refilled and reused for the life of the lure with out altering the lure structure in any way. Removal and replacement of the entire scent receiving element without altering or damaging the lure is considered to be an obvious modification to one having ordinary skill in the art, since many fishing lures provide this feature to ensure that the scent receiving element function properly.

C. Rejection of claims 23, 24, 27 and 32 under U.S.C. §102(b) as being anticipated by Walker.

The crux of Applicant's arguments concerning the Walker reference is that he does not place the scent receiving material at an end of the lure. The Examiner respectfully disagrees and insists that an "end" of a lure is a broad limitation as recited in the present claims. If Walker's lure were to be split in half along a line 3, and each half then defining an "end" of the lure,

clearly the scent receiving material 22 is located at an "end" of the lure. Also Walker's lure, as best viewed in Figure 3, shows the scent receiving element 22 on a peripheral "end" of the lure.

The Applicant also contends that Walker's scent receiving element does not conform to the perimeter of the lure. The Examiner disagrees and draws attention to Figure 3 where it can be seen that the scent receiving material 22 fills in cavity 23, thus conforming to the perimeter, established by body 11. The scent receiving material also cooperates with said body to define a smooth continuous surface that does not in any way interfere with the motion of the lure.

Finally regarding the argument that Walker is not a "jig" lure, it is noted that Merriam-Webster's Collegiate Dictionary (10th Ed.) defines a "jig" as "any of several fishing devices that are jerked up and down or drawn through the water". Clearly Walker's lure would take such action when in use.

D. Rejection of claim 22 under U.S.C. §103(a) as being unpatentable over Mooers.

Regarding the rejection of claim 22 of obviousness over Mooers, the Examiner stand by the assertion that it would have been obvious to one having ordinary skill in the art at the time the invention was made to duplicate the scent receiving element as disclosed my Mooers. Duplication of such a part would only increase the effectiveness of dispersion of the scented bait attractant into the water and would not in any way change the scope of Mooers' device.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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September 8, 2003

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